IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5341 of 1983

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAKSHIN GUJARAT VIJ COMPANY LTD., & 7 - Petitioner(s)
Versus
G.E.B EMPLOYEE'S UNION & 1 - Respondent(s)

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Appearance :
MR SN SHELAT, SR.COUNSEL with MS LILU K BHAYA for the Petitioners.
MR AK CLERK for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 26/09/2007

ORAL JUDGMENT

This petition under Article 227 of the Constitution of India was preferred by the Gujarat Electricity Board (hereinafter referred to as, **“the**

Board"), the predecessor of the petitioner Dakshin Gujarat Vij Company Limited (hereinafter referred to as, **"the Company"**), against the judgment and order dated 29th June, 1983 passed by the Industrial Court, Ahmedabad in Appeal No.81/1979.

At the relevant time, the rule of seniority amongst the non-technical staff of the Board was governed by the award dated 6th January, 1966 passed by the Industrial Court in Reference No.121/1963. Clause IV of the said award provided, inter alia, that, "**Whenever order of preference is not indicated while making the selection, the interse seniority of all the candidates promoted together should be fixed on the following basis :-**

(i) Seniority in the lower post or grade as the case may be."

While the said award was in operation, on 31st January, 1976 the Government of Gujarat passed resolution to provide for reservation for Scheduled Caste and Scheduled Tribe candidates in the matter of promotion, according to the roster set by the State Government. Pursuant to the said resolution, the

Board on 11th April, 1978 passed General Standing Order No.276 (GSO 276) to provide for such reservation in respect of promotions of the employees of the Board to higher posts in the Board.

Feeling aggrieved by the said GSO 276, the respondent – Gujarat Electricity Employee's Union (hereinafter referred to as, **"the Union**"), a representative union under the Bombay Industrial Relations Act, 1946 (hereinafter referred to as, **"the Act of 1946")**, challenged the same before the Labour Court, Surat in Application No.12/1979. According to the Union, the reservation policy contained in the said GSO 276 was contrary to the rules of seniority framed by the award dated 6th January, 1966. Any change in the said rule of seniority, if necessary, warranted procedure to be followed as envisaged by Section 42 of the Act of 1946. The Board having not followed the said procedure, the award dated 6th January, 1966 shall prevail. The reservation policy contained in the said GSO 276, having been made in contravention of the award dated 6th January, 1966, was illegal and required to be quashed and set-aside.

The said challenge was contested by the Board. According to the Board, the reservation policy contained in the said GSO 276 did not, in any manner, contravene the rules of seniority contained in the award dated 6th January, 1966 and the Board was acting within its jurisdiction in passing the said GSO 276. The Labour Court, by its judgment and order dated 9th October, 1979, accepted the contention raised by the Union and upheld the challenge to the GSO 276. Consequently, the Labour Court issued direction to the Board not to implement the said GSO 276 and issued direction restraining the Board permanently from effecting the change because the same was sought to be implemented without proper and legal procedure. Feeling aggrieved, the Board preferred Appeal No.12/1979 before the Industrial Court, Ahmedabad. The said appeal came to be dismissed by the impugned judgment and order dated 29th June, 1983. Therefore, the present petition.

At the outset, Mr.Clerk has submitted that pending this petition by Notification dated 19th April, 2005 issued by the State Government, the

Company has been exempted from the application of the Act of 1946. Pursuant to the said Notification, the Company has issued Circular dated 28th November, 2005. Under the said Circular, pursuant to the judgment of the Hon'ble Supreme Court in the matter of **R.K.Sabharwal and others v/s. State of Punjab and others** [AIR 1995 SC 1371], the 'post-based reservation' policy has been introduced with effect from 19th April, 2005. He has submitted that in view of the new 'post-based reservation' policy and in view of the passage of time, the erstwhile 'vacancy-based reservation' policy introduced under the aforesaid GSO 276 cannot now be implemented. The matter has thus become infructuous or matter at issue has become academic. In either case, the same does not require to be decided on merits.

Mr.Shelat has contested this proposition. He has submitted that irrespective of the new 'post-based reservation' policy, the matter cannot be said to have become infructuous. In case the said GSO 276 is upheld, without disturbing the promotions and seniority of existing employees, benefits may be

conferred on Scheduled Caste and Scheduled Tribe candidates. The petition is required to be decided on merits.

In the above circumstances, I am of the opinion that the matter at issue has indeed become academic in as much as now that the former reservation policy has been replaced by the 'post-based reservation' policy contained in Circular dated 28th November, 2005. The question of implementation of the 'vacancy-based reservation' policy contained in the GSO 276 does not arise. As to its retrospective operation, to me it appears that the same, even if upheld by this Court, cannot now be implemented almost after 30 years with retrospective effect so as to unsettle the matters of promotion and seniority which are hitherto settled. Nevertheless, as the matter has been discussed on merits, I decide the petition as under:

Mr.Shelat has submitted that by the said GSO 276 the Board had introduced a policy of reservation in the matter of promotion of the employees of the Board to higher posts within the Board. In other words, the

employees belonging to the Scheduled Caste and Scheduled Tribe categories had been given preferential right to be considered for promotion in order of roster. The said preferential right did not give a right to promotion. Nor did it confer a preferential right to seniority also. After the promotion, the seniority of such employees also would be governed by the rule of seniority contained in the award dated 6th January, 1966. The said GSO 276, therefore, neither did change the conditions of service of the employees nor did it contravene the award dated 6th January, 1966. The Board was, therefore, not obliged to follow the procedure as envisaged by Section 42 of the Act of 1946. He has buttressed his submissions by the judgments of the Hon'ble Supreme Court in the matters of **Ajit Singh and others v/s. The State of Punjab and others** [AIR 1999 SC 3471] and of **Reserve Bank of India, Bombay v/s. C.T.Dighe and others** [AIR 1981 SC 1699].

Mr.Clerk has contested the petition. He has relied upon the award dated 6th January, 1966 and in particular clause IV(i), reproduced hereinabove, of

the said award. He has submitted that the said clause requires that the seniority of personnel on promotion to the higher post would be governed by their interse seniority in the lower post or grade. If the employees belonging to the Scheduled Castes or Schedule Tribes were given preferential right to promotion irrespective of their seniority in the lower post or grade, they would certainly steal a march in the matter of promotion and would get a higher seniority in the promotional post also. The GSO 276 was, therefore, contrary to the award to that extent.

In the matter of Ajit Singh and others (supra), in paragraph 70 of the judgment, the Hon'ble Supreme Court observed that, **“...reservation under Article 16(4) or Article 16(4A) are not intended to determine seniority but are merely intended to provide “adequate representation” at the promotional level.”**

In the matter of Reserve Bank of India, Bombay (supra), the Hon'ble Supreme Court has held that a chance of promotion is not a condition of service.

The change in the chances of promotion cannot be said to be a change in the condition of service.

It should be recalled that the grievance of the Union was confined to the said reservation policy being contrary to the award dated 6th January, 1966 particularly caluse IV(i) thereof reproduced hereinabove. In my view, the said challenge is not sustainable. The rule of seniority settled by the aforesaid award dated 6th January, 1966 and clause IV(i) thereof determine the seniority of the persons appointed or promoted to a post. None of the clauses of the said award pertain to the promotion itself or that who should be promoted or how should be promoted. While the reservation policy contained in GSO 276 provided a preferential right to the Scheduled Caste and Scheduled Tribe employees in the matter of being considered for promotion. If eligible for promotion; found suitable for promotion and promoted; the seniority of such persons also would be governed by the rule of seniority contained in the award dated 6th January, 1966. Thus, in my view, the said reservation policy did not, in any manner,

contravene the award dated 6th January, 1966. Both the Courts below have erred in construing the reservation policy contained in GSO 276 and the rule of seniority contained in the award dated 6th January, 1966.

For the aforesaid reasons, the petition is allowed. The impugned judgment and order dated 29th June, 1983 passed by the Industrial Court, Ahmedabad in Appeal No.81/1979 is quashed and set-aside. The Application No.12/1979 made by the respondent Union to challenge the aforesaid GSO 276 is rejected. Rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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